



Seattle City Attorney

Peter S. Holmes

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Rules Coordinator
Washington State Liquor Control Board
P.O. Box 43080
Olympia, WA 98504-3080

Dear Rules Coordinator:

The City of Seattle appreciates this opportunity to comment on the historic draft rules proposed by the Washington State Liquor Control Board (Board) to establish the first legally-sanctioned recreational marijuana production, processing and retail distribution system anywhere, pursuant to Initiative 502. It is obvious that thorough research and thoughtfulness went into drafting these rules. Washington can be proud of the open and diligent manner in which the Board conducted its rulemaking proceedings. As Washington's largest city, with the largest number of medical marijuana facilities and strong public opinion favoring legalization, Seattle looks forward to partnering with the Board to regulate this new industry. We understand that there will be a second formal and final publication of the draft rules for comment in the next couple of months, and we look forward to commenting on the final draft rules as well.

We support the overall structure and content of the draft rules. In particular, we support leniency toward license applicants with prior misdemeanor convictions for marijuana possession. We further agree that the Board should review applicants' prior marijuana growing and delivery convictions on a case-by-case basis. This approach supports I-502's primary goal of displacing illegal competitors. Moreover, it is well-established that America's war on marijuana results in racially disproportionate arrests and convictions—it is encouraging to see that the Board is working to undo some of the harm caused by these past discriminatory practices.

We also support the Board's decision to permit nonresidents to purchase one ounce of marijuana at a retail store. People travel to Washington for many reasons, and tourism is a significant industry within Seattle and throughout the state. We want tourists to enjoy our beautiful outdoors, fresh produce, microbrews, fine wines, professional sports and entertainment. We should similarly embrace marijuana tourism. However, retailers must not oversell to non-residents so that marijuana might be taken across state lines. I-502 does not prohibit nonresidents from traveling to Washington, purchasing marijuana from a licensed retailer, or consuming that marijuana within the state, but we support Governor Inslee's promise that Washington State will not become "the country's

export market for marijuana.” We need a strong partnership with law enforcement to extinguish the illegal market and properly regulate the new legal market.

Some issues require more research and subsequent rulemaking, including:

Medical Marijuana. Medical marijuana remains a great challenge following the partial veto of the State Legislature’s comprehensive medical marijuana bill. We look forward to reviewing and commenting on your draft report with recommendations for the medical marijuana industry. We are also willing to participate in the research and preparation of the medical marijuana report.

Nonresidential Use. I-502 prohibits opening “a package containing marijuana . . . in view of the general public.” It is not clear whether this limits marijuana use only to private residences or also allows it in establishments that may be private and not “in view of the general public” because the phrase “in view of the general public” is not defined in I-502. For renters and tourists, allowing marijuana use in certain types of establishments other than private residents may be the only mechanism to enjoy marijuana. This is both a race & social justice and an economic development issue. Renters and tourists should not be forced to use marijuana in parks or on sidewalks. We recommend that the Board study private use clubs or similar accommodations and propose appropriate rules governing their establishment and regulation. For smoking and vaporizing marijuana, rules addressing private use clubs may also require consideration of RCW Ch. 70.160’s applicability to marijuana use.

Delivery. A careful reading of I-502 suggests that bicycle and truck deliveries are neither expressly permitted nor prohibited. We recommend that the Board study delivery services and propose draft regulatory rules. Hours of operation, truck advertising, and criminal background checks for employees will be critical considerations for the industry.

Three items may require further clarification. First, under WAC 314-55-020(4), the Board will investigate and verify the applicant’s sources of funds; we understand that funds derived from a medical marijuana operation will be allowed for the purpose of starting a retail recreational marijuana business. Second, WAC 314-55-050 speaks of suspending and cancelling licenses, but subsection 11 states that an application for a new license (as opposed to renewal or transfer) may be denied for a violation of the 1,000-foot rule. RCW 69.50.331(8); WAC 314-55-160(2). This means a marijuana business should not lose its license if a protected use later moves within 1,000 feet of the marijuana business. Finally, while marijuana businesses will constantly report their inventory, sales, and other statistics, substantial changes in their operating plans must be approved in advance by the Board. WAC 314-55-020 and -087. We understand that localities will receive notice of applications for license expansions and have an opportunity to object regardless of when the application is filed. WAC 314-55-160.

We submit the following specific rule changes:

WAC 314-55-010 Definitions and 1,000-foot rule. We recommend that the Board align its definitions for the 1,000-foot separation requirement with that of the federal sentencing enhancements found in 28 U.S.C. 860 by adding a subsection providing that for private and public colleges, public and private universities, public and private vocational schools, and public housing developments with child care centers, game arcades, playgrounds, park areas or recreational facilities, the 1,000 feet shall be measured from the perimeter of the institution as a whole.

Additional suggested definitional changes:

- (6) “Game arcade” means any facility, legally accessible to persons under 18 years of age, intended primarily for pinball and video machines for amusement containing a minimum of ten pinball and/or video machines ~~((an entertainment venue featuring primarily video games, simulators, and/or other amusement devices))~~.
- (7) “Library” means an organized collection of resources made accessible to the public for reference or borrowing owned and managed by a city, county, state, or federal government.
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- (11) “Playground” means any outdoor facility intended for recreation, open to the public, and with any portion containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swing sets, and teeterboards ~~((a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment))~~, owned and managed by a city or county.
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- (14) “Recreation center or facility” means any recreational facility, swimming pool and/or gymnasium, intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities ~~((a supervised center that provides a broad range of activities and events))~~.

For “child care center” we recommend reference to another WAC for consistency and defining the type of licensed facility, as follows:

“Child care center” means an ~~((licensed))~~ educational environment providing child day care and early learning services for a group of children for periods of less than twenty-four hours and ~~((with curriculum usually associated with preschools))~~ licensed by the Washington State Department of Early Learning under WAC 170-295.

For the definition of “Public Transit Center”, we recommend that the Board relax the proposed rule. As drafted to target any sheltered waiting area for multiple bus routes, nearly every arterial and commercial zone in Seattle would become ineligible for a retail

store. This might have the unintended consequence of driving the Seattle marijuana market back underground. Instead, we recommend consulting transit agencies around the state to refine the definition. In King County, Metro has 13 public transit centers. In Seattle, examples include the Northgate Transit Center and Mount Baker Transit Center. They are often characterized by large real properties not in the right-of-way and contain parking lots. Such facilities have the added benefit of having defined perimeters, making it easier to apply the 1,000-foot rule. We suggest the following:

- (13) “Public transit center” means a facility located outside of the public right-of-way owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles ~~((sheltered waiting areas located))~~ where ~~((several))~~ a large number of bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route-to-route transfers.

WAC 314-55-075(1) Outdoor growing. We recommend that the Board allow outdoor growing operations, subject to security and other location requirements. Energy consumption can be quite significant for some indoor grow operations, and the government should be concerned with energy consumption and energy efficiency. We note that data centers with large energy needs are moving close to power plants and dams, which could impact rural Washington landscapes and urban energy customers. The same thing could happen with larger indoor growing operations that are not greenhouses. Also, outdoor growing operations might come at a lower cost, which will keep prices and taxes lower and provide more market competition.

WAC 314-55-081 - Number of Licenses. The formula used by the Board to determine the number of retail licenses that will be issued per city or county or statewide should be explained with an opportunity to comment before finalizing it. If like state liquor stores there will only be a limited number of retail stores, we may want to ensure better geographical coverage.

WAC 314-55-097 – Waste disposal. We recommend that marijuana waste not be rendered unusable. Instead, it should be converted into other products, such as paper, clothing, and bio-fuel.

WAC 314-55-105 Packaging. We are concerned about recent reports of marijuana poisoning in children who ate marijuana candy or cookies. For these types of products enticing to children, we recommend opaque childproof packaging requirements.

WAC 314-55-020(10) – Landlord affidavit. We recommend the Board reconsider its position on the landlord affidavit requirement. Nearly all landlords know the businesses of their tenants; consequently, the affidavit may be viewed as a violation of their Fifth Amendment rights. Landlords already shoulder tremendous risk, and this requirement seems to provide no useful additional information for the Board.

June 10, 2013

Page 5

Finally, local governments must be able to share in the State's revenue. Implementing and enforcing I-502 will be a costly venture for government at all levels, from business licensing and zoning to law enforcement and other public health and safety considerations. Seattle is pleased to be a partner in this groundbreaking effort, and we urge the Liquor Control Board and State of Washington to consider these costs with corresponding revenue sharing and funding options.

Again, thank you for this opportunity to comment on the Board's proposed recreational marijuana rules. Unraveling decades of prohibition will not be easy, but we are committed to maintaining a strong partnership with the Board moving forward.

Very truly yours,



Peter S. Holmes
Seattle City Attorney

cc: Mayor Michael McGinn
Sally Clark, President, Seattle City Council